

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BELINDA WISE**

Claimant

VS.

**CONAGRA FOODS**

Respondent,  
Self-Insured

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Docket No. 1,010,008

**ORDER**

The respondent appealed the May 11, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

After a preliminary hearing held June 8, 2003, the Administrative Law Judge (ALJ) determined claimant suffered accidental injury arising out of and in the course of employment. On October 16, 2003, the Board affirmed the ALJ's Order. On March 31, 2004, the respondent filed an application for preliminary hearing requesting termination of claimant's temporary total disability compensation and medical benefits.

The respondent offered an EMG report which established claimant had been diagnosed with bilateral carpal tunnel syndrome in December 2000. Respondent noted claimant had testified at the first preliminary hearing that she had never experienced problems with her upper extremities before she went to work for respondent in December 2002. Respondent argued that claimant's condition was not aggravated by her short work history with respondent, that the medical testimony was based upon an incorrect history that claimant's upper extremities were asymptomatic before working for respondent, and, consequently, claimant's benefits should be terminated.

Claimant denied she had been told the results of the EMG and disputed that she had made the complaints about hand symptoms noted in one medical record. Claimant reiterated that her hands and wrists were asymptomatic until she began working for respondent.

At the conclusion of the preliminary hearing, the ALJ noted that it appeared claimant lied at the first preliminary hearing, nonetheless, the ALJ noted his initial order was based upon the fact claimant had aggravated a preexisting condition. Consequently, the ALJ

concluded that claimant's work aggravated her condition and, even though her claim was suspicious, the respondent had not met its burden to prove claimant's condition had not been aggravated by her work with respondent.

Respondent requests review of whether claimant met with accidental injury arising out of and in the course of her employment. Respondent argues claimant was injured before she began work for respondent and requests that the Board terminate claimant's benefits or remand the claim to the ALJ for determination of the issue whether claimant suffered a compensable injury.

Conversely, claimant requests the Board to affirm the ALJ's Order.

The only issue before the Board on this appeal is whether claimant injured or aggravated her upper extremities while working in respondent's plant.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes that the May 5, 2004 preliminary hearing Order should be affirmed.

The claimant's medical records from Cooper Green Hospital in Birmingham, Alabama, were offered as exhibits at the preliminary hearing held on May 5, 2004. Included in the records was an EMG report which established claimant had been diagnosed with bilateral carpal tunnel syndrome in December 2000.

At the first preliminary hearing, the claimant had testified that she had not experienced any problems with her hands, wrists or arms before beginning work for respondent. And she further testified that as far as she knew her hands were normal before she began work for respondent.

At the May 5, 2004 preliminary hearing, the claimant testified that she did not recall the EMG testing in 2000 and that she had never been advised that the testing revealed that she had mild bilateral carpal tunnel syndrome. Claimant again testified that her hands were asymptomatic until she went to work for respondent.

Although the ALJ did not believe claimant was unaware of the results of the EMG testing, he noted that the initial order was based upon a finding that claimant's work for respondent had, at a minimum, aggravated a preexisting condition. He further noted that there was no evidence the doctors would change their causation opinions based upon the fact claimant had been diagnosed with mild carpal tunnel syndrome in 2000. Absent such testimony the ALJ concluded claimant suffered an aggravation of her preexisting condition while working in respondent's plant. The Board agrees.

The Board is not unmindful of the evidence that claimant had been previously diagnosed with mild bilateral carpal tunnel syndrome, which claimant denied she had been told. However, even assuming such preexisting condition, it is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.<sup>1</sup>

The initial order for compensation included the determination that claimant's work with respondent had aggravated a preexisting condition. The fact that claimant falsely denied such preexisting condition does not alter the evidence compiled to date that her work with respondent aggravated and intensified her preexisting condition.

As provided by the Act, preliminary hearing findings are not final but subject to modification either upon presenting additional evidence at another preliminary hearing or upon a full hearing on the claim.<sup>2</sup>

**WHEREFORE**, the Board affirms the May 11, 2004 Order entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this 30th day of June 2004.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Mark E. Kolich, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976); *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

<sup>2</sup> See K.S.A. 44-534a(a)(2).